



PUBLIC NOTICE

Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

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DA 05-2278

Released: August 11, 2005

**DOMESTIC SECTION 214 APPLICATION FILED FOR TRANSFER OF CONTROL
OF NII COMMUNICATIONS, LTD FROM NII COMMUNICATIONS, INC. TO
CLEARTEL COMMUNICATIONS, INC.**

STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 05-237

Comments Due: August 25, 2005

Reply Comments Due: September 1, 2005

On July 14, 2004, Cleartel Communications, Inc. ("Cleartel") and nii communications, inc. ("Parent") (together, "Applicants"), filed an application pursuant to sections 63.03 and 63.04 of the Commission's rules¹ requesting authority to transfer of control of nii communications, ltd. ("nii"), an authorized international and domestic interstate carrier. The proposed transactions will involve the purchase by Cleartel of all the equity interest of nii from Parent.²

Applicants assert that this transaction is entitled to presumptive streamlined treatment under section 63.03(b)(2)(i) of the Commission's rules because, immediately following the proposed transactions, (1) Cleartel and its affiliates, including nii, will collectively hold less than a 10% share of the interstate, interexchange market; (2) Cleartel and its affiliates will provide competitive local exchange or exchange access services only in areas served by dominant local exchange carriers (none of which are parties to the proposed transactions); and (3) none of the Applicants or their affiliates are dominant with respect to any service.³

Parent is a corporation organized under the laws of the state of Delaware. nii, a Texas limited partnership, is owned by Parent and nii communications gp, llc, a Texas limited liability

¹ 47 C.F.R. §§ 63.03, 63.04; *see* 47 U.S.C. § 214.

² Applicants have also filed an application for consent to transfer authorization for international services. Any action on this domestic 214 application is without prejudice to Commission action on other related pending applications.

³ 47 C.F.R. § 63.03(b)(2)(i).

company ("General Partner"). Parent currently holds a 99% limited partnership in nii, while General Partner holds a 1% general partnership interest in nii. General Partner is a wholly-owned subsidiary of Parent. nii is a provider of local exchange, domestic and international long distance, and enhanced voice, data and internet services which operates in five states. After the consummation of the proposed transaction, nii will retain its authorization and will continue to provide services to its customers.

Cleartel, a Delaware corporation, provides voice and data solutions to customers in the Northeast, Southeast, Southwest, and Midwestern United States. Through its wholly-owned subsidiaries, Cleartel Telecommunications, Inc., Cleartel Telecommunications of Virginia, Inc., NOW Communications, Inc., Telecon Communications, Corp., and IDS Telecom Corp., Cleartel offers local, Internet, and long distance services to both residential and business users in 29 states and the District of Columbia.⁴ Cleartel is a portfolio investment company of MCG Capital Corporation ("MCG"), a publicly-traded investment corporation organized under Delaware law. Eubel, Brady & Suttman Asset Management, Inc., a U.S. investment entity, owns 10% of MCG. No other entity owns or controls a 10% or greater interest in nii.

In addition to its interest in Cleartel, MCG also holds interests in other competitive telecommunications companies, including BridgeCom International, Inc. ("BridgeCom"), TruCom Corporation ("TruCom"), Broadview Networks, Inc. ("Broadview"), and Broadview NP Acquisition Corp ("Broadview NP"). BridgeCom and TruCom provide resold and facilities-based competitive interexchange and local exchange services primarily in the New York/New Jersey area.⁵ Broadview provides resold and/or facilities-based competitive interexchange and local exchange services in California, Connecticut, Delaware, the District of Columbia, Florida, Georgia, Illinois, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Texas, Vermont, Virginia and West Virginia.⁶ Broadview NP holds authority to provide interexchange service and, in some instances, competitive local exchange service, in the following 23 states: New York, Massachusetts, New Jersey, Virginia, Michigan, Delaware, Rhode Island, Pennsylvania, New Hampshire, Texas, California, Illinois, Maine, Maryland, Ohio, Vermont, West Virginia, Connecticut, Indiana, Montana, Nevada, Oklahoma and Colorado.

⁴ Cleartel's operating subsidiaries provide competitive interexchange and local services in Alabama, Arkansas, California, Connecticut, the District of Columbia, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, Missouri, North Carolina, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Virginia, West Virginia, and Wisconsin.

⁵ BridgeCom also provides interexchange services in Arkansas, California, Connecticut, Florida, Georgia, Illinois, Iowa, Kansas, Maine, Massachusetts, Michigan, Ohio, Pennsylvania, Rhode Island, Texas and Washington.

⁶ Broadview also has two wholly-owned subsidiaries -- Broadview Networks, Inc. of Mass. and Broadview Networks, Inc. of VA -- that provide service in Massachusetts and Virginia only.

Applicants entered into a Purchase Agreement dated June 1, 2005 ("Agreement") under which Parent has agreed to sell all of the assets of nii.⁷ Under the terms of the Agreement, IH NII Acquisition, Inc. ("Acquisition"), a newly-created subsidiary of MCG (the ultimate owner of Cleartel), will acquire all of the membership and partnership interest of nii and General Partner from Parent. Immediately thereafter, Acquisition will become a wholly-owned subsidiary of Cleartel. Subsequently, Acquisition will be liquidated, and its assets, including the membership and partnership interests of General Partner and nii, will be transferred to Cleartel. As a result, upon completion of the proposed transaction, General Partner will be a wholly-owned, direct subsidiary of Cleartel, and General Partner and Cleartel will collectively own nii. Applicants emphasize that the proposed transaction is limited to a change in equity ownership of nii, and will not result in the transfer or discontinuance of any customers. Immediately following consummation of the proposed transaction, nii's customers will continue to receive services under the same rates, terms and conditions of service as currently provided by nii. nii will continue to operate and provide services to customers, and its rates will continue to be governed by its tariffs and contracts, with any future change in rates subject to any requirements outlined in those tariffs and contracts. In addition, the proposed transaction will not result in a change in the name under which nii provides services. As a result, the proposed transaction will be transparent to nii's customers.

Applicants state the proposed transaction will serve the public interest because it will increase competition in the telecommunications market by reinforcing the status of nii as a viable competitor, and it will minimize the disruption of service and be transparent to nii's customers. The proposed transaction is expected to facilitate competition by improving the operations position of nii and allowing nii to expand its service offerings in the future. Applicants indicate that, by creating a more effective and multifaceted telecommunications carrier, the proposed transaction will significantly enhance competitive choices for U.S. telecommunications customers. Moreover, Applicants assert that, because the proposed transaction will not directly affect nii's rates, terms and conditions of service, the transaction will have no negative effects on customers.

GENERAL INFORMATION

The transfer of control identified herein has been found, upon initial review, to be acceptable for filing as a streamlined application. The Commission reserves the right to return any transfer of control application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file **comments on or before August 25, 2005 and reply comments on or before September 1, 2005.**⁸ Unless otherwise notified by the Commission, Applicants are permitted to transfer the

⁷ A copy of the Purchase Agreement will be provided upon request.

⁸ See 47 C.F.R. § 63.03(a).

assets and related control on the 31st day after the date of this notice.⁹ Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments.
- **For ECFS filers,** if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.
- **Paper Filers:** Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW, Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432

⁹ Such authorization is conditioned upon receipt of any other necessary approvals from the Commission in connection with the proposed transaction.

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You may submit comments, identified by the above noted docket number, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Federal Communications Commission's Web Site: <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: FCC504@fcc.gov or phone: 202-418-0530 or TTY: 202-418-0432.

In addition, one copy of each pleading must be sent to each of the following:

- (1) The Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW, Room CY-B402, Washington, DC 20554, www.bcpiweb.com; phone: (202) 488-5300 fax: (202) 488-5563;
- (2) Tracey Wilson-Parker, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C212, Washington, D.C. 20554; email: tracey.wilson-parker@fcc.gov;
- (3) Alex Johns, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C317, Washington, D.C. 20554; e-mail: alexis.johns@fcc.gov;
- (4) Susan O'Connell, Policy Division, International Bureau, 445 12th Street, S.W., Room 7-B544, Washington, D.C. 20554; email: susan.o'connell@fcc.gov; and
- (5) James Bird, Office of General Counsel, 445 12th Street, S.W., Room 8-C824, Washington, D.C. 20554; e-mail: james.bird@fcc.gov.

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC, 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC 20554, telephone: (202) 488-5300, fax: (202) 488-5563, or via e-mail www.bcpiweb.com.

For further information, please contact Tracey Wilson-Parker, at (202) 418-1394, or Alex Johns at (202) 418-1167.

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